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"law; that is the point which we have considered, and "we are all of opinion, that if there is nothing but the "absolute conveyance, without the possession, that in point "of law is fraudulent."

This court is of the same opinion. We think that the intent of the statute is best promoted by that construction; and that fraudulent conveyances, which are made to secure to a debtor a beneficial interest while his property is protected from creditors, will be most effectually prevented by declaring that an absolute bill of sale is itself a fraud, unless possession "*accompanies and follows the deed.*" This construction too comports with the words of the act. Such a deed must be considered as made with an intent "*to delay, hinder, or defraud creditors.*"

On the second bill of exceptions the court did right in refusing to give the instruction required. The question propounded seems to have been an abstract question not belonging to the cause.

Judgment affirmed with costs.

UNITED STATES

v.

R. T. HOOE AND OTHERS.

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Under the judiciary act of 1789, in chancery cases, a statement of facts must accompany the transcript. This provision was revived by the repeal of the act of February 1801.

THIS was a writ of error to a decree of the circuit court of the district of Columbia, sitting as a court of Chancery.

The case was, that colonel Fitzgerald in the year 1794 was appointed collector of the customs for the port of Alexandria, and gave bond to the United States in the penalty of 10,000 dollars, with R. T. Hooe as his surety, for the faithful performance of the duties of the office. In consequence of misapplication of large sums of money by the chief clerk, who was entrusted with almost the whole

management of the buſineſs, col. Fitzgerald became deficient in his accounts with the United States to the amount of 57,000 dollars. After this fact was diſcovered he executed a deed of truſt of part of his real eſtate to truſtees, to be ſold to indemnify Hooe from the demands of the United States againſt him, as ſecurity of Fitzgerald, and alſo to ſecure him againſt ſundry notes which he had indorſed for him at the bank of Alexandria, as well as to enable him to take up further ſums at the bank, as his exigencies might require. After the death of col. Fitzgerald, the truſtees advertiſed the property for ſale, and the United States obtained an injunction to ſtay the ſale, alleging that by the acts of congreſs, they were entitled to a prior lien upon the eſtate of their debtor; and that the deed, as to them, was fraudulent. In the court below, the claim of the United States was reſted altogether upon the prior lien created by the act of congreſs; and the court being of opinion that the act did not create a lien on the real eſtate, and that there did not appear to be any fraud in the tranſaction, diſſolved the injunction, with coſts, and ordered 10,000 dollars, part of the proceeds of the ſale, to be paid into the treaſury of the United States in ſatisfaction of the bond, in which Hooe was the ſurety, and the reſidue, after paying the notes due at bank, to be paid into the treaſury of the United States, in part ſatisfaction of the balance due from the eſtate of Fitzgerald. It having been proved to the ſatisfaction of the court, that the money, ariſing from the notes diſcounted at the bank, had been before paid by Fitzgerald to the United States.

To reverſe this decree, the preſent writ of error was ſued out by the attorney for the United States.

The decree of the court below did not ſtate the *facts* upon which the decree was founded; and although the record contained the bill, anſwers, exhibits and all the evidence which was before the court below, yet no ſtatement of facts, according to the proviſion of the judiciary act of 1789, ch. 20. §. 19, was made by the parties or by the court.

The attorney general * opened the cauſe on the part of

* Mr. Lincoln.

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the United States, and was going on to ſhew that the deed was fraudulent, as to creditors, upon general principles of law, (a ground not taken in the court below) when he was ſtopped by an enquiry from the court, whether there was any proviſion in the act concerning the diſtrict of Columbia, by which the caſe was taken out of the operation of the nineteenth ſection of the judiciary act of 1789, which required a ſtatement of the facts to accompany the record. Upon recurring to the act of congreſs, 27th February 1801, concerning the diſtrict of Columbia, ch. 86. §. 8, it was found that writs of error were to "be proſecuted in the ſame manner, under the ſame regu-"lations, and the ſame proceedings ſhall be had therein, "as is, *or ſhall be* provided in the caſe of writs of error on "judgments, or appeals upon orders or decrees rendered "in the circuit court of the United States." Upon which the court ſaid, that the deciſions on the act of 1789, §. 19, had been, that unleſs a ſtatement of facts appeared upon the record, they could not ſay there was error. 3. *Dallas*, 337, *Jennings v. Brig Perſeverance.* It is true that the act of *February* 13. 1801. *chap.* 75. §. 33, remedied the evil, but that act was repealed in 1802, ſo that the law now ſtands as it did before the act of 1801. And the act concerning the diſtrict of Columbia, by ſaying that writs of error ſhall be proſecuted in the ſame manner as is, *or ſhall be*, provided, &c. places this caſe under the law of 1789. Whatever might be the preſent opinion of the court if this were the firſt time of being called upon to give a conſtruction to that clauſe of the act, yet the queſtion has been ſolemnly ſettled. One legiſlature has taken cognizance of the conſtruction given by the court, and has provided for the caſe, but another legiſlature has repealed that proviſion and thereby given a ſubſequent legiſlative conſtruction, or at leaſt ſhewn ſuch a legiſlative acquieſcence under the conſtruction which this court formerly gave to the act, as is now concluſive.

At the requeſt of the attorney general, the writ of error was diſmiſſed. †

† Congreſs being in ſeſſion at this time, an act was introduced and paſſed, containing a clauſe ſimilar to the 33d ſection of the act of 13th February, 1801, reſpecting writs of error and appeals in caſes of equity and maritime juriſdiction, &c. *Laws of U. S. vol. 6. p. 315, c. 93, 3d March*, 1803.